

ZONING BOARD OF APPEALS
MEETING MINUTES
November 18, 2014
4:00 P.M.

CALL TO ORDER: Mr. John Stetler, Chairperson called meeting to order at 4:00 P.M.

ATTENDANCE:

Members Present: Rick Barnes Carlyle Sims
 Samuel Gray John Stetler
 James Moreno

Members Excused: Deland Davis, Greg Dunn and Becky Squires

Staff Present: Christine Zuzga, Planning Supervisor
 Marcel Stoetzel, Assistant City Attorney
 Glenn Perian, Senior Planner
 Leona Parrish, Admin. Assistant, Planning Dept.

ADDITIONS OR DELETIONS TO THE AGENDA: Chairperson Mr. Stetler moved item New Business to be before Old Business on today's agenda so the appellant may be heard first.

CORRESPONDANCE: None

Mr. John Stetler, Chairperson stated the meeting procedure where everyone present may speak either for or against an appeal and that he will ask for a staff report to be read and then open the public hearing. At the public hearing persons may come forward and state their name and address for the record as it is being recorded and then speak either for or against an appeal. The public hearing will then be closed and the zoning board will discuss and make a decision. Mr. Stetler stated if denied the petitioner may appeal to the Circuit Court.

NEW BUSINESS:

A. Appeal of Decision of Zoning Board Administrator #A-01-14:

Regarding 42 Fremont Street: Mr. Nelson Karre, Vandervoort, Christ & Fisher, P.C. on behalf of owner Mr. David Massimino and Mr. Michael Gillfillan. Request to appeal the decision of the zoning officer's decision to not allow a legal non-conforming use as a boarding house for property located at 42 Fremont Street.

Mrs. Christine Zuzga stated this property is located in an "R-2 Two Family Residential" zone that also allows use as one and two family residential district. Stated the property was rezoned in 1988 from a multi-family zoning district and with that change in zoning the uses that were permitted on the property changed. Said prior to 1988 large boarding houses up to ten were allowed by right, additionally they had changed the ordinance in the late 70's to allow for large Group Adult Foster Care facilities and they recently became aware of the property and how it was occupied based on some complaints from the neighborhood, therefore Code Compliance had done a rental solicitation and it had been resubmitted as being used as single family home meaning there was only one kitchen, one

bath and one entrance so it is not broken up into apartments. Said with every zoning complaint received they have to go through and do a legal non-conforming investigation to determine what use if any is considered legal non-conforming. Said from the documents in the meeting packet the legal use would have been an Adult Foster Care Facility as the State records indicate that it was initially open in 1988 ending in 1997; which at that time the zoning would have been made to come into compliance with zoning to only allow a four-unit boarding home. Said the burden of proof is on the applicant to provide proof that they have used the property in a legal non-conforming manner and it is our premise that they have not shown or demonstrated that and it is our determination that the legal non-conforming use was for an Adult Foster Care Facility that ceased its use in 1997 and would then needed to come into compliance with the zoning ordinance at that time.

Mr. John Stetler asked how long ago the city received the complaint. Ms. Zuzga stated six to nine months ago.

Mr. John Stetler said that it stated in the report that the rental registration process outlined in the ordinance only stated requiring zoning review in 2008 and recent amendments in 2011 removed it; asked why we are going back and forth on checking zoning. Ms. Zuzga said a property is going to be required to be in compliance with zoning regardless of the rental registration ordinance, however prior to 2008 the rental registration ordinance did not require a zoning review and at that time she was not certain that was performed and is not required again. Said in 2008 the ordinance changed to require zoning and when she was hired in 2009 they started reviewing all zoning legal non-conforming and properties that were not in compliance with the zoning district they are in to ensure they are compliant. Stated it has been taken out of the rental registration ordinance as of 2011 as there was some concerns by people that zoning was a hurdle for rehabbing properties but that the city still check the zoning even if it is not required by the ordinance.

Mr. James Moreno asked if the city had received notification that it was continuing its use as a boarding house when it ceased to be used as an Adult Foster Care Facility. Ms. Zuzga stated the city does not receive notification from the state when an adult foster care license has been rescinded; in the past 8-10 years they try to do an updated listing of those that are licensed through the state; however in the past few years they have now made sure those were in conformance with the zoning ordinance.

Mr. John Stetler asked in order to accommodate ten persons would they need to have a license from the State. Ms. Zuzga stated with the zoning district it is in now they would only be allowed to accommodate four people in a boarding house.

Mr. John Stetler asked if in 1997 when they did not get the State approval; would they have had to have a State approval to continue that usage. Ms. Zuzga said for an Adult Foster Care Facility, yes.

Mr. Carlyle Sims asked being a two-family duplex how many persons would be legal. Ms. Zuzga stated there are certain building code requirements that talk about the space required per bedroom and per occupancy; however State law and local office say you can have one-family in each dwelling unit and family is not going to be distinguished by marriage or blood as it is not legal, so as long as the persons have a relationship with each other "single domestic unit", they can live together.

Carlyle asked if they can then now have 5 persons in each unit being a duplex. Ms. Zuzga stated it is now used as a single-family unit and can convert to a two-unit as it would be allowed by zoning.

Mr. Nelson Karre, Vandervoort, Christ & Fisher, P.C., stated they have a different view; Mr. Massimino and Mr. Michael Gillfillan have owned and operated this property as a boarding house since 1970 and never stopped. Said city staff have attempted to create a question on whether a change in licensure means a facilities use changed for purposes of a lawful non-conforming use; which is significant as he believes the city has the burden to show that the lawful non-conforming use that was there before the ordinance was changed in December 1988 was never abandoned and if it was never abandoned it is still entitled to remain in place. Said if the lawful non-conforming use was there and if staff does not dispute that there was a lawful non-conforming use in 1988, then the burden is on the city to prove that there was abandonment with an intent to abandon; noted that for 40+ years they have had up to ten boarders until 1988 a lawful use under the zoning ordinance. Said parts of that time but not continuously they obtained a license from the State for an Adult Foster Care in order to dispense meds to the people living there and in 1997 is when they had a possible buyer and the sale fell through and they had not renewed the license. Said the use as a boarding house did not change they had housed veterans for the past 15 years and is not a duplex but has always been a single-family home with lots of bedrooms a kitchen and bath.

Mr. Karre stated the city has always known this was a boarding house since the years it has been there as the income tax department records has always described this property as a boarding house; therefore the city knew it was a boarding house. Said he understands the rental ordinance has changed through the years and the owners had registered and was inspected after 1997 more than once and does not question the city did not know it was a boarding house. Stated the State of Michigan disclosed the license ended, but did not say the use had ended and that this is a lawful non-conforming use and the license is the only thing that had stopped. Said the burden is on the city to prove it had been abandoned and/or intent to abandon and is here today asking to challenge and appeal the decision as it has never abandoned its use and has provided supporting information attached to the report along with CPA document showing it's tax use and believe they have shown its use had never changed.

Mr. David Massimino, 3600 E. Kurby Road, Bedford Township, MI, property co-owner stated he has tried to adjust accordingly through the years to accommodate a variety of clients, tenants, and agencies all of whom have had different programs and was asked by Veterans Affairs to provide a room and board for veterans who could not qualify for care in a licensed facility and not afford private quarters for room and board as they have limited funds and are not eligible for SSI benefits. Said they reluctantly agreed and was inspected by the VA a number of times and do not make any money and sometimes lose money. Stated he is a veteran and is satisfying a need and that is what they do is help veterans. Said working with the State was oppressive and difficult to comply with their rules and when you dispense meds it is very tricky and they decided to stop the State License and transition from a State Adult Foster Care and work with the VA to assist veterans.

Mr. Mike Gillfillan, 303 E. Hickory Road, Battle Creek, MI, property co-owner said he was not sure where a complaint came from as they had cleaned the area and neighborhood; that the neighbors have supported the neighbors and city in the past such as watering the neighborhood gardens on both sides of their property and cleaned the sidewalks of snow all down the street. Stated they have strict rules and a curfew to abide by or they are made to leave. Said he has never heard of complaints from neighbors in the past and that there are other homes and apartments in the area; noted they have done nothing wrong and that staff is always there and have had to have police come a few times in past and have worked with the VA, Summit Pointe and parole office very closely with social workers visiting every day. Mr. Gillfillan said he has had veterans that have lived there for 13 years and they help them

with their lives as it is their home and also assist them to get jobs etc. and they are not aware of complaints in the past as it is a controlled environment.

Mr. Nelson Karre asked his clients to affirm to the board if they have never closed for 40+ years and that they have been sometimes licensed with the state and sometimes not and that the veterans program you have now does not require any type of license and are on a hands-on relationship with the VA. Mr. Massimino and Mr. Gillfillan stated yes; said the pay they receive is very little and is in a controlled environment.

Mr. Carlyle Sims asked if it was in 1997 when it was last licensed as an Adult Home; if the city has been out and inspected in the last 17 years and why this this coming up now and not been inspected. Mr. Nelson Karre said they have pondered this question also and not sure of the answer. Said Ms. Zuzga was not involved at that time, but predecessors was not aware of zoning issue there and after 1997 there had been numerous inspections by the city; presently the city has only been there for Code Compliance rental registration and the only thing that ended was the State Licensing.

Mr. Carlyle Sims asked if it had been registered as a rental for the city. Owner stated yes, in last October they had three issues needing addressed and were completed. Said this summer were contacted by Code Compliance stated they needed to paint their garage and back porch painted; which they complied and around that time they received a letter to close them down and showed it to the code officer which did not understand as he said he has known it to be as it is for years. Stated in 2003 they registered as a rental and were contacted in 2009 to renew their rental registration and had to pay \$500 dollars for being late and re-registered.

Mr. James Moreno asked if in 1997 someone wanted to purchase your property. Owner stated yes, they approached them and asked what would they sell it for and he made up a number and told them to get their own license from the State and they lost interest and that is when they then made the transition into a boarding house.

Mr. Samuel Gray asked if in 1988 when it was classified as "R-2 Two/One Family" dwelling it still constitutes as a legal-nonconforming dwelling. Mr. Gray asked this because the rental registration it was classified as an "R-2" registered rental. Mr. Nelson Karre stated the zoning district has been "R-2" for a long time and the uses permitted within the "R-2" district is what changed significantly in December of 1988. Mrs. Zuzga stated the zoning on the property was changed in 1998; prior to 1988 it was zoned "R-3A Multi-Family Residential" which allowed for the 10-units.

Mr. John Stetler explained to Mr. Gray (being a new member) that a non-conforming use can continue if it is continuous.

Mr. Samuel Gray asked if they considered this property to have been grandfathered use (legal non-conforming use).

Mr. Nelson Karre stated it was lawful before December 1988 and this use was never abandoned.

Mr. John Stetler asked who is the "Currency Provider" that was noted on one of the letters you provided? Owner stated it is a guardian for some of the residents they have in their home; it's a private owned company handles guardianship, and funds etc.

Mrs. Zuzga stated she wanted to make a few clarifying points; we need to first show the use of the property was legal non-conforming and that the burden of proof is on the applicant. Once the use is classified as a legal-non conforming, then the intent to abandon has to be demonstrated by the city in order for it to be removed. Said the city is still at the point where they say it is a legal non-conforming use as Adult Foster Care our records back to 1977 through 1997 show the legal-nonconforming use as an Adult Foster Care Facility, not as a boarding or rooming house; if their argument is that they are one in the same, then the zoning board can make that decision. Said it is staff's premise that they are two complete different uses as an Adult Foster Care is licensed by the State provides personal care, protection and supervision to occupants of a rooming and boarding house; a rooming boarding house provide room and board and it's the city's stance they are two separate uses and that they have not demonstrated that their use of the property is a legal non-conforming use.

Mr. Nelson Karre stated the owners have been there every day since 1971 and can say that for 40+ years they operated a rooming board facility with up to 10 residents and provided them food; sometimes it was licensed from the State and sometimes it did not and the constant was a boarding house and has always been used as such and only difference is that it occasionally had a license and the use did not change.

Mr. James Moreno stated the meeting packet had information that indicates in the early 1970's until 1997 where this property was licensed in some form or fashion. Mr. Karre stated yes for a lot of those years it had a license from one department of the State or another both before and after 1988.

Mr. John Stetler asked if there was any further discussion, seeing none he would entertain a motion.

MOTION WAS MADE BY MR. CARLYLE SIMS IN FAVOR THE APPELLANT TO REVERSE THE DECISION OF THE ZONING OFFICER AND AGREE WITH THE APPELLANT THAT THE NONCONFORMING USE OF THE PROPERTY HAS BEEN, AND CONTINUES TO BE, A LEGAL NONCONFORMING TEN-UNIT BOARDING HOUSE FOR PROPERTY LOCATED AT 42 FREMONT STREET; SECONDED BY MR. RICK BARNES.

Discussion:

Mr. Carlyle Sims stated the biggest problem he sees is that it may not be conforming at this date, but it doesn't appear that the appellants have abandoned the property as it has been some form of boarding house etc. which is still in existence. His thinking is if they abandoned the property and then tried to open a business back up it would then be illegal, but it appears to him it has always been used as a legal non-conforming boarding house since 1997.

Mr. James Moreno stated the definition of boarding house verses licensed home is where he is stuck as all that time it was a licensed home of sort that had to conform to State laws and any entities being served at the time, you had to conform to their requirements in order to maintain that licensure and have those clients within the facility. Mr. Moreno states this is the sticking point that a boarding house vs licensure is a matter of question. Said if in 1997 the sale did not go through and they continued the business, then why not continue the licensure and would have stayed within the conformity and would not be a question of being a boarding home or a licensed facility.

Mr. Samuel Gray said he is in agreement with if it is a business operating on a non-conforming site then it shows it discontinued or revoked the non-conforming use status; therefore it changes somehow after 1997 as a boarding house.

Mr. John Stetler stated he can understand how the cities point of view on it and think they have done a nice job of gathering the evidence, but he is in favor of the appellant and would be voting for the appellant.

MR. JOHN STETLER ASKED FOR ANY ADDITIONAL COMMENTS, SEEING NONE A VOTE WAS TAKEN; FOUR IN FAVOR (BARNES, GRAY, SIMS, & STETLER); ONE OPPOSED (MORENO), MOTION CARRIED

OLD BUSINESS:

A. Zoning Board of Appeals By-Law Revision

Mrs. Zuzga stated that after the last zoning board meeting her and Glenn Perian spoke and that there was some conversation how the standard of legal non-conforming structures would be viewed. Said our current ordinance and by-laws state that it is based on insurable value standards and that our department is working on a survey of other communities and how they deal with this type of issue and what standard they use in evaluating them. Said in an email received today that survey had been completed and have included it on our 2015 project list to do a revision in our ordinance and present to the Planning Commission for approval and would then be able to change the by-laws for the Zoning Board of Appeals. Stated she plans to do this along with the fence ordinance within the next few months.

APPROVAL OF MINUTES:

MOTION: WAS MADE BY MR. JAMES MORENO TO APPROVE THE OCTOBER 14, 2014 ZONING BOARD OF APPEALS MINUTES AS PRESENTED; SUPPORTED BY MR. CARLYLE SIMS.

ALL IN FAVOR; NONE OPPOSED, MOTION CARRIED –MINUTES APPROVED.

COMMENTS BY THE PUBLIC: None

COMMENTS BY THE MEMBERS / STAFF:

Mr. John Stetler stated he suggest we get an additional alternate member for the Zoning Board and encourage people to apply. Stated the application is on our city's web site and ask to bring new members to this group and we need younger; women; and diverse persons to apply.

Ms. Christine Zuzga stated she spoke with Mayor Owens and she is aware of needing a second alternate. Stated for today's applicant Mr. Karre was provided an opportunity to extend this meeting until the next meeting when more members are in attendance and he wished to proceed today.

Mr. James Moreno stated this application is perplexing as in the past they made a conscious decision to not be a State Licensed Adult Foster Care to another type of business which is non-conforming. Said

the removal of zoning from rental ordinance was the worst decision ever made by the city, which caused the Zoning Board to make tough decisions and they need to take a look at the rental ordinance. Mr. Carlyle Sims said his biggest problem with today's appeal was that for seventeen years this has been going on and it should have been caught before now and how did it come to our attention now and not in the past; said something is wrong with our system. Stated he wanted to thank the staff for the staff reports and receiving them in a timely manner so they have time to review.

Ms. Zuzga stated the ordinance was changed in 2011 to remove zoning as a factor for rental registration, however staff still enters a zoning inspection separate from the rental registration for them to check any property that does not comply with the zoning district; so the zoning is still being checked but cannot hold up a rental registration permit if zoning does not comply and that they can still then go through the enforcement process. Said the rental license does state to the owner they are held responsible to be in compliance with zoning. Said the process is now minimizing as properties go through the process.

Mr. John Stetler asked a question to legal counsel, if when Mr. David Farmer was in the room he had not asked him for comments and assume he represents the city and if he wished to speak he would have during the staff report and did not choose to; therefore he did not ask him for comments and assume that is appropriate. Mr. Marcel Stoetzel stated it is appropriate; however if he was present and you wanted to hear from him, you could have called upon him to speak and noted that is why city staff is present and that one person is designated to provide the staff report. Ms. Zuzga stated he can sit up with staff as well.

ADJOURNMENT: Meeting was adjourned at 4:56 P.M.

Submitted by: Leona A. Parrish, Administrative Assistant, Planning Department